

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DROPLETS, INC.,

Plaintiff,

vs.

**OVERSTOCK.COM, INC.,
SEARS ROEBUCK & CO.,
SEARS BRANDS LLC,
SEARS HOLDINGS CORPORATION,**

Defendants.

Civil Action No. 2:11-cv-401

JURY TRIAL

THE PARTIES' UNCONTESTED FACTS AND STIPULATIONS

The parties agree to the following uncontested facts and stipulations.

1. Subject matter jurisdiction for this action is proper in this Court.
2. The parties do not contest that, in this action, the Court has personal jurisdiction over the parties.
3. Venue is proper in this action in this Court.
4. The parties do not contest that Droplets, Inc. ("Droplets") has standing to bring this suit.
5. Droplets filed its Original Complaint on September 11, 2011.
6. Droplets filed its First Amended Complaint adding the '115 patent on December 13, 2013.
7. Droplets is a corporation organized and existing under the laws of Delaware, with its principal place of business at 555 Republic Dr., Ste. 311, Plano, TX 75074.

8. Defendant Sears, Roebuck & Co. is a corporation organized under the laws of the State of New York and maintains its principal place of business at 3333 Beverly Road, Hoffman Estates, Illinois.

9. Defendant Sears Brands, LLC is a corporation organized under the laws of the State of Illinois and maintains its principal place of business at 3333 Beverly Road, Hoffman Estates, Illinois.

10. Defendant Sears Holdings Corporation is a corporation organized under the laws of the State of Delaware and maintains its principal place of business at 3333 Beverly Road, Hoffman Estates, Illinois (the parent company of Kmart).

11. Collectively the three Sears entities referred to in paragraphs 8, 9, and 10 are referred to as “Sears.”

12. Defendant Overstock.com, Inc. (“Overstock”) is a corporation organized under the laws of the State of Delaware and maintains its principal place of business at 6350 South 3000 East, Salt Lake City, Utah.

13. Collectively, Sears and Overstock are referred to as the “Defendants.”

14. The ’745 patent is titled “System and method for delivering a graphical user interface of remote applications over a thin bandwidth connection,” and issued on February 3, 2004. The application for the ’745 patent was filed on June 22, 2000. The face of the ’745 patent lists Provisional Application No. 60/153,917, filed September 14, 1999, as being related to the ’745 patent. The named inventors of the ’745 patent are Louis M. Franco, Frank Leon Rose, Philip S. J. Brittan, Mark Cunningham, Alex Bulkin, Mat Baskin, and Greg Blonder. A reexamination certificate for the ’745 patent issued on March 1, 2011. The original 26 claims of the ’745 patent were unchanged in the reexamination certificate and 78 additional claims were added.

15. The '838 patent is titled "System and method for delivering remotely stored applications and information," and issued on March 10, 2009. The application for the '838 patent was filed on November 24, 2003, and is a continuation of the '745 patent. The named inventors of the '838 patent are Louis M. Franco, Frank Leon Rose, Philip S. J. Brittan, Mark Cunningham, Alex Bulkin, Mat Baskin, and Greg Blonder.

16. The '115 patent is titled "System and method for delivering remotely stored applications and information," and issued on March 19, 2013. The application for the '115 patent was filed on January 26, 2009, and is a continuation of the '838 patent, which is a continuation of the '745 patent. The named inventors of the '115 patent are Louis M. Franco, Frank Leon Rose, Philip S. J. Brittan, Mark Cunningham, Alex Bulkin, Mat Baskin, and Greg Blonder.

17. Droplets is asserting infringement of the following claims against the following features available through Defendants' websites (a "✓" indicates that a feature is accused of infringing that claim; a blank box indicates that a feature is not accused of infringing that claim):

	<u>115 Claim 25</u>	<u>115 Claim 2</u>	<u>115 Claim 24</u>	<u>838 Claim 1</u>	<u>838 Claim 2</u>	<u>745 Claim 1</u>
<u>Sears Search Suggest</u>	✓	✓	✓	✓	✓	✓
<u>Overstock Search Suggest</u>	✓	✓	✓	✓	✓	✓
<u>Kmart Search Suggest</u>	✓	✓	✓	✓	✓	✓
<u>Sears Add to Cart</u>	✓		✓	✓	✓	✓
<u>Kmart Add to Cart</u>	✓		✓	✓	✓	✓
<u>Overstock Mousehover Over Shopping Cart</u>	✓		✓	✓	✓	✓
<u>Sears Store Pickup Locator</u>				✓	✓	✓

18. Sears stipulates that the source code provided by Sears is representative of the operation of the Sears Search Suggest, Sears Add to Cart, Sears Store Pickup Locator, Kmart Search Suggest, and Kmart Add to Cart accused features from September 11, 2011 (the date the lawsuit was filed) through the date of the conclusion of the trial.

19. Overstock stipulates that the source code provided by Overstock is representative of the operation of the Overstock Mousehover Over Shopping Cart accused feature from September 11, 2011 (the date the lawsuit was filed) through the date of the conclusion of the trial.

20. Overstock stipulates that the source code provided by Overstock is representative of the operation of the Overstock Search Suggest feature from at least May 1, 2012 through the date of the conclusion of the trial. Overstock additionally contends that from September 11, 2011 (the date the lawsuit was filed) through February 1, 2012 it was using a search suggest feature supplied by Google and from February 1, 2012 through May 1, 2012 it was using a search suggest feature supplied by Adobe.

DATED: January 15, 2015

Respectfully submitted,

McKool Smith, P.C.

/s/ Theodore Stevenson, III

Theodore Stevenson, III

LEAD ATTORNEY

Texas State Bar No. 19196650

tstevenson@mckoolsmith.com

McKool Smith, P.C.

300 Crescent Court, Suite 1500

Dallas, Texas 75201

Tel: (214) 978-4974

Fax: (214) 978-4044

Sam F. Baxter

Texas State Bar No. 01938000

sbaxter@mckoolsmith.com

McKool Smith, P.C.

104 E. Houston St., Ste. 300

P.O. Box O

Marshall, Texas 75670

Tel: (903) 923-9000

Fax: (903) 923-9095

Josh W. Budwin

Texas State Bar No. 24050347

jbudwin@mckoolsmith.com

James E. Quigley

Texas State Bar No. 24075810

jquigley@mckoolsmith.com

McKool Smith, P.C.

300 West Sixth Street, Suite 1700

Austin, Texas 78701

Tel: (512) 692-8700

Fax: (512) 692-8744

Brett E. Cooper

New York State Bar No. 4011011

bcooper@mckoolsmith.com

McKool Smith, P.C.

One Bryant Park, 47th Floor

New York, NY 10036

Telephone: (212) 402-9400

Facsimile: (212) 402-9444

**ATTORNEYS FOR PLAINTIFF
DROPLETS, INC.**

BRACEWELL & GIULIANI LLP

/s/ John H. Barr, Jr.

John H. Barr, Jr.
Attorney-in-Charge
State Bar No. 00783605
john.barr@bgllp.com

Christopher A. Shield
State Bar No. 24046833
chris.shield@bgllp.com

711 Louisiana, Suite 2300
Houston, Texas 77002
(713) 223-2300 – Telephone
(713) 221-1212 – Facsimile

**ATTORNEYS FOR DEFENDANT
OVERSTOCK.COM, INC.**

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served electronically on January 15, 2015, on counsel for Overstock and Sears.

/s/ James E. Quigley
James E. Quigley